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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

RESHON TOLLIVER,

Defendant and Appellant.

C062493

(Super.Ct.No.  
08F09853)

In 2005, defendant Reshon Tolliver was convicted of possessing methamphetamine for sale and was sentenced to state prison. When released on parole, defendant was required to comply with conditions including that he not own, use, or possess any type of firearm or ammunition.

During a parole search in December 2008, parole agents found in a wastebasket by defendant's bed a bag contained approximately 50 bullets of various calibers. Brass knuckles with a dagger attached to them were found on a shelf in defendant's bedroom.

Defendant claimed he had found the ammunition inside of a lock box he purchased from a surplus store in 2006, and he disposed of the bullets by putting them in a vase and later in the bag found by parole agents. According to defendant, he did not want to throw them out because he was concerned that someone would go through the trash and find the bullets. He said he purchased the other item to be part of his knife collection. He thought it was a knife resting upon a stand and did not know the stand was brass knuckles.

Defendant was charged with unlawful possession of ammunition by a convicted felon and with unlawful possession of metal knuckles and a prior prison term enhancement. A jury found him guilty of the ammunition charge (Pen. Code, § 12316, subd. (b)(1)), but not guilty of possessing metal knuckles. In bifurcated proceedings, defendant admitted the prior prison term allegation. He was sentenced to an aggregate term of three years in state prison, with custody credits of 163 actual days, plus 80 conduct days pursuant to Penal Code section 4019.

Defendant appealed, and we appointed counsel to represent him on appeal. Counsel filed an opening brief that sets forth the facts of the case and asks us to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Following the filing of this appeal, defendant's appellate counsel wrote to the trial court on February 19, 2010, asking that

defendant's credits be increased to 162 days of conduct credit in accordance with Penal Code section 4019, as recently amended by the Legislature. We do not know whether the trial court has acted upon the request.

#### DISCUSSION

Pursuant to this court's miscellaneous order No. 2010-002, filed March 16, 2010, we deem defendant to have raised the issue (without requesting supplemental briefing) of whether amendments to Penal Code section 4019, effective January 25, 2010, apply retroactively to his appeal and entitle him to more presentence credits.

For the reasons stated in *People v. Brown* (Mar. 16, 2010, C056510) \_\_\_ Cal.App.4th \_\_\_, we conclude that the amendments apply to all appeals pending as of January 25, 2010, including defendant's appeal.

Defendant is not among the prisoners excepted from the additional accrual of credit. (Pen. Code, § 4019, subds. (b)(2) and (c)(2); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Thus, having served 163 days of presentence custody, he is entitled to 162 days of conduct credits.

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

#### DISPOSITION

The judgment is modified to specify custody credits as follows: 163 days of actual custody credit and 162 days of conduct credit, for a total of 325 days of presentence custody credit. As modified,

the judgment is affirmed. The trial court is directed to amend the abstract of judgment accordingly and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

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SCOTLAND, P. J.

We concur:

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SIMS, J.

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RAYE, J.